

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Petitioner,

v.

Case No. 06-20411-4

DERRICK YOUNG,

Respondant.

ORDER DENYING PETITIONER'S MOTION TO AMEND

On January 18, 2011, the court sentenced Petitioner Derrick Young to 720 months' imprisonment for conspiracy to distribute cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1), killing a person while engaged in an offense punishable under 18 U.S.C. § 924 (c), and aiding and abetting in such an offense in violation of 18 U.S.C. § 924(j). On January 17, 2012, Petitioner filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. The Government filed a response on February 22, 2012. More than a year later, on July 29, 2013, Petitioner moved to amend his § 2255 habeas corpus petition pursuant to *Alleyne v. United States*, 133 S.Ct. 1251 (2013). For the reasons that follow, the court denies the motion.

Amending a habeas corpus petition "is governed by the 'rules of procedure applicable to civil actions.'" *Hodges v. Rose*, 570 F.2d 643, 649 (6th Cir. 1978) (citing 28 U.S.C. § 2242). Federal Rule of Civil Procedure 15 governs when a pleading may be amended. If twenty-one days of serving a pleading or service of a responsive pleading have passed, a party may amend its pleading only with the opposing party's written consent or at the court's leave. Fed. R. Civ. P. 15(a)(1)–(2). Courts "should

freely give leave [to amend] when justice so requires.” *Id.* However, leave should be freely given only “[i]n the absence of any apparent or declared reason—such as . . . futility of amendment.” *Forman v. Davis*, 371 U.S. 178, 182 (1962). A “proposed amendment is futile if the amendment could not withstand a Rule 12(b)(6) motion to dismiss.” *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000). A complaint may be dismissed under Rule 12(b)(6) when the plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Petitioner filed the instant motion exclusively based on the Supreme Court’s recent decision in *Alleyne*. In that case, the Court held that any fact that increases a minimum mandatory sentence must be treated as an element of a crime that must be submitted to a jury. *Alleyne*, 133 S.Ct. at 2155. The Court was careful to state that its ruling “does not mean that any fact that influences judicial discretion must be found by a jury.” *Id.* at 2163. The Court also noted, “we have long recognized that broad sentencing discretion, informed by judicial factfinding, does not violate the Sixth Amendment.” *Id.* Petitioner does not challenge his sentence based on facts that increased a minimum mandatory sentence.

As noted previously, the court sentenced Petitioner for violations of 21 U.S.C. §§ 846, 841(a)(1) as well as 18 U.S.C. § 924 (c) and (j). Neither violation carried a mandatory minimum. The Fifth Superseding Information states, “Derrick Young, did knowingly, intentionally and unlawfully combine, conspire, confederate and agree . . . to possess with the intent to distribute and to distribute cocaine, a Schedule II controlled substance.” (Pg. ID # 480.) As this is a “case of a controlled substance in schedule I or II,” Petitioner faced a sentence of “a term of imprisonment of not more than 20 years.”

21 U.S.C. 841(b)(1)(c). Similarly, 18 U.S.C. § 924 does not carry a mandatory minimum sentence. “A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall— . . . if the killing is a murder . . . be punished by death or by imprisonment for any term of years or for life.” 18 U.S.C. § 924 (j). Because the statutes that Petitioner violated did not carry mandatory minimum sentences, *Alleyne* is inapplicable.

Petitioner’s proposed amendment would not survive a motion to dismiss and is futile. Accordingly,

IT IS ORDERED that Petitioner’s motion to amend [Dkt. # 301] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 24, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 24, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
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